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Supreme Court Of The United States
October Term. 1980

80-6017 **ORIGINAL COPY**

Richard Payton,
Petitioner

-Vs-

David R. Harris,
Respondent

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SUPREME COURT, U.S.

On Petition For Writ Of Certiorari To The
United States Court Of Appeals
For The Second Circuit

"Petitioner's Reply To Defendant's
Memorandum" Opposing
Petition For Writ Of Certiorari

Appearance:

Oliver Gioia West Jr.
976 East 45th Street
Brooklyn, New York, 11203
(Friend And Legal Assistant
For The Petitioner)

Richard Payton. 78-A-0098
Drawer B.
Stormville, New York, 12582

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Sworn To October 24, 1980.

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1980

80-6017

RICHARD PAYTON,
PETITIONER

-Vs-

DAVID R. HARRIS,
RESPONDENT

PRELIMINARY STATEMENT

NOW COMES, RICHARD PAYTON, THE PETITIONER, TO CLARIFY THE ISSUES WHICH IS PRESENTED IN HIS PETITION FOR WRIT OF CERTIORARI, BEFORE THIS COURT, PURSUANT TO RULE 22, SUBD (5), (6) (REPLY AND SUPPLEMENTAL BRIEF), OF THE SUPREME COURT RULES.

ARGUMENTATION

I

IN LIGHT OF ADAMS Vs COYLER, — U.S. —, 101 S.CT. 703 (1981). PRISONERS TRANSFERRED PURSUANT TO THE PROVISIONS (ARTICLES) OF THE AGREEMENT ARE NOT REQUIRED TO FORFEIT ANY PRE-EXISTING RIGHTS THEY MAY HAVE UNDER STATE OR FEDERAL LAW TO CHALLENGE THEIR TRANSFER TO THE RECIEVING STATE.

This Court Just Recently Affirmed the Decision Rendered in the case of Adams Vs Coyler, 592 F.2d. 720 (C.A.3. 1979), And Held in Coyler Vs Adams, —U.S.—, 101 S.Ct. 703, 712 (1981):

"

> The Remedial Purpose of the Agreement Supports An interpretation that give Prisoners the Right To A Judicial Hearing in which they can bring a Limited challenge to the Receiving State Custody Request. In Light of the Purpose of the Detainer Agreement, As Reflected in the Structure of the Agreement, And its Legislative History, We Conclude As a Matter of Federal Law That "Prisoners Transferred Pursuant To the Provisions of the Agreement Are Not Required to Forfeit Any Pre-Existing Rights They May Have Under State or Federal Law To Challenge their Transfer To the Receiving State." Respondent Adams Has therefore Stated a Claim for Relief Under 42 U.S.C. 1983 For the Asserted Violation By State officials of the Term of the Detainer Agreement (Cite omitted).

Accordingly, Under the Authority of Adams, the Petitioner (Payton) States a Claim For Relief (1) By Petitioner being unlawfully Removed From the State of New York (Green Haven Prison), Taken To the State of New Jersey, Prior To "Petitioner's Pre-Transfer Judicial Hearing" That was Schedule By the Court in New York (Dutchess County), in which Petitioner would Have Contested the Legality of His Delivery To the State of New Jersey And (2) As well As to the Provisions (Articles) of the Agreement which this case Specifically Entails, Concerning Petitioner's Cause of Action, which is Before this Court.

II

THE SECOND CIRCUIT PANEL MISSTATED THE FACTS, COUNSEL WAS ASKED DURING ARGUMENT TO REPRESENT, NOT WHETHER PETITIONER WOULD HAVE SUBMITTED AN AFFIDAVIT DENYING RECIPT OF PROPER NOTIFICATION UNDER THE AGREEMENT.

IN REGARD TO DEFENDANT'S EXHIBITS, SUBMITTED IN THE DISTRICT COURT. THE DISTRICT COURT PURPORTING TO TREAT DEFENDANT'S AFFIDAVIT AS A RENEWED MOTION TO DISMISSED, ISSUED A MEMORANDUM ENDORSEMENT AND ORDER DISMISSING THE COMPLAINT (APP. 95). THE DISTRICT COURT DID NOT SPECIFY WHICH PARTICULAR DOCUMENTS SUBMITTED BY THE ATTORNEY GENERAL SUPPORTED ITS CONCLUSION.

THE SECOND CIRCUIT PANEL'S CONCLUSION FINDS NO SUPPORT IN THE RECORD OR IN THE REPRESENTATIONS MADE DURING ARGUMENT BY APPELLANT'S COUNSEL (EXH. A.P. 2.) (ATTACHED TO PETITIONER'S WRIT OF CERTIORARI). CONTRARY TO THE PANEL'S DECISION, COUNSEL WAS ASKED DURING ARGUMENT TO REPRESENT, NOT WHETHER PETITIONER WOULD HAVE SUBMITTED AN AFFIDAVIT DENYING RECEIPT OF PROPER NOTIFICATION UNDER THE AGREEMENT, BUT WHETHER APPELLANT WOULD HAVE SUBMITTED AN AFFIDAVIT DENYING THAT HE HAD BEEN SHOWN EXHIBITS "B" AN "H" (APP. 41, 55-60) (EMPHASIS ADDED).

THE PETITIONER ATTACHES (TO THIS REPLY AND SUPPLEMENTAL BRIEF FOR PETITION FOR CERTIORARI), AN AFFIDAVIT SWORN TO ON OCTOBER 24, 1980, TO THE EFFECT THAT (1) HE WAS NOT SHOWN EXHIBIT B AND (2) THAT HE WAS NEVER ADVISED OF ANY OF HIS RIGHTS UNDER ARTICLE IX(7) OF THE AGREEMENT.

IN VIEW OF THE MISINTERPRETATION OF THE SECOND CIRCUIT PANEL, EXTRAORDINARY RELIANCE ON COUNSEL'S RELUCTANCE

TO MAKE A REPRENSENTATION DURING ARGUMENT, IN WHICH THE SECOND CIRCUIT PANEL, BELIEVE THAT THE DISTRICT COURT COMMITTED NO REVERSIBLE ERROR BY DISMISSING THE PETITIONER'S CIVIL RIGHT'S COMPLAINT (EXH. A.P. 2.) (SECOND CIRCUIT MADE THIS CONCLUSION (MISSTATED), BASED UPON COUNSEL'S RELUCTANCE TO MAKE A REPRESENTATION DURING ARGUMENT THAT GIVEN THE CHANCE, HIS CLIENT WOULD HAVE SUBMITTED AN AFFIDAVIT DENYING THAT HE HAD RECEIVED PROPER NOTIFICATION UNDER THE DETAINER AGREEMENT. EXH. A.P. 2).

THEREFORE, UNDER THE MISINTERPRETATION OF THE SECOND CIRCUIT PANEL, EXTRAORDINARY RELIANCE ON COUNSEL'S RELUCTANCE TO MAKE A REPRESENTATION DURING ARGUMENT.

THE PETITIONER'S BELIEVES, THAT THE SECOND CIRCUIT PANEL, DID COMMIT REVERSIBLE ERROR, IN THE AFFIRMANCE OF THE "DISTRICT COURT RENEWED MEMORANDUM" IN DISMISSING THE PETITIONER'S CIVIL RIGHT'S ACTION, AND THIS COURT SHOULD REVERSED THE DECISION OF THE SECOND CIRCUIT PANEL, RENDERED ON OCTOBER 15, 1980. SEE: EXHIBIT A.P. 2.

III

THE SECOND CIRCUIT PANEL FAILED TO APPLY THE CORRECT STANDARDS FOR SUMMARY JUDGMENT.

NONE OF THE EVIDENCE SUBMITTED SUBMITTED BY DEFENDANT IS COMPETENT EVEN TO DISPUTE THE ALLEGATION THAT PLAINTIFF-PETITIONER WAS NOT ADVISED OF HIS ARTICLE IX(1) RIGHTS. THE ONLY DOCUMENT WHICH EVEN MENTIONS A RIGHT TO PETITION THE GOVERNOR OF NEW YORK IS EXHIBIT "B" (APP. 41) WHICH CARRIES THE NOTATION "REFUSED TO SIGN 4/10/78 (THE FIRST MENTION IN THE COMPLAINT OF ANY NOTIFICATION TO PAYTON OF DETAINERS IS JUNE 5, 1978 (APP. 8).

A BOLD ASSERTION BY AN ANONYMOUS PARTY THAT PLAINTIFF "REFUSED TO SIGN" A PROLIX LEGAL DOCUMENT FAILS TO SATISFY ANY OF THE REQUIREMENTS OF RULE 56(e), THAT THE MATERIAL SUBMITTED (1) BE MADE ON THE AFFIANT'S PERSONAL KNOWLEDGE; (2) SHALL SET FORTH SUCH FACTS AS WOULD BE ADMISSIBLE IN EVIDENCE AND (3) SHALL SHOW AFFIRMATIVELY THAT THE AFFIANT IS COMPETENT TO TESTIFY TO THE MATTERS STATED THEREIN. SEE ALSO: FOOTNOTE 11, AT PAGE 14 OF THE PETITIONER'S WRIT OF CERTIORARI, FILED IN THIS COURT ON JANUARY 10, 1981 (EMPHASIS ADDED). REFUSAL TO SIGN THESE DOCUMENTS, EVEN IF ESTABLISHED, WOULD IN NO WAY SUGGEST THAT PETITIONER WAS MADE AWARE OF THEIR CONTENTS, WHICH IN ANY EVENT DO NOT FULLY SET FORTH THE ARTICLE IX(7) RIGHTS.

THIS CIRCUIT (SECOND) HAS HELD THAT SUMMARY JUDGMENT MAY NOT BE GRANTED WHERE THE MOVING PARTY FAILS TO MAKE AN INITIAL SHOWING THAT THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT" EVEN THOUGH THE PARTY OPPOSING THE MOTION HAS SUBMITTED NO PROBATIVE EVIDENCE TO SUPPORT ITS POSITION OR ESTABLISH THAT THERE IS A GENUINE ISSUE FOR TRIAL". CF., UNITED STATES VS PENT-R-BOOKS, INC., 538 F. 2d. 519, 529 (C.A. 2. 1976), CITING ADICKES VS S.H. KRESS AN CO., 398 U.S. 144, 159-160 (1970). SINCE DEFENDANT HAS FAILED TO MAKE AN INITIAL SHOWING THAT PETITIONER WAS ADVISED OF ANY RIGHTS UNDER THE AGREEMENT, SUMMARY JUDGMENT WAS IN ERROR.

SECONDLY, WITHAL EVEN IF DEFENDANT'S SUBMISSION WERE COMPETENT TO PUT PAYTON'S ARTICLE IX(7) RIGHTS IN ISSUE, SUMMARY JUDGMENT WAS INAPPROPRIATE BECAUSE PETITIONER WAS NOT GIVEN AN OPPURTUNITY TO SUBMIT COUNTER-AFFIDAVITS.

RULE 12(b) REQUIRES THAT IF COURT DOES NOT EXCLUDE MATTERS OUTSIDE THE PLEADINGS ON A MOTION TO DISMISS, THE MOTION MUST BE TREATED AS ONE FOR SUMMARY

JUDGMENT AND ALL PARTIES MUST BE GIVEN REASONABLE OPPORTUNITY TO PRESENT ALL MATERIAL PERTINENT TO SUCH A MOTION. THE SECOND CIRCUIT HAS HELD THAT THE TERM "REASONABLE OPPORTUNITY" IN RULE 12(b) INCLUDES NOTICE TO ALL PARTIES THAT THE COURT IS TREATING A 12(b)(6) MOTION AS ONE FOR SUMMARY JUDGMENT (EMPHASIS ADDED). CF. DALE VS HAHN, 440 F. 2d. 633, 638 (C.A. 2. 1971). SEE ALSO: JENSEN VS KLECKER, 599 F. 2d. 243, 245 (C.A. 8. 1979) (SAME STANDARDS APPLIES TO PRO SE LITIGANTS).

THE SECOND CIRCUIT PANEL, DID NOT REPUDIATE THE PROPOSITION THAT PAYTON WAS ENTITLED TO THE "REASONABLE OPPORTUNITY" SET FORTH IN RULE 12(b) AND DALE VS HAHN, SUPRA, BUT CONCLUDED THAT PAYTON, EVEN IF GIVEN SUCH AN OPPORTUNITY, WOULD NOT HAVE SUBMITTED AN AFFIDAVIT DENYING THAT HE HAD BEEN ADVISED OF HIS ARTICLE III(c) RIGHTS (THE COURT CONCLUSION, WAS MISSTATED INADVERTENTLY).

ACCORDINGLY, FROM THE ABOVE MENTION, THREE (3) REQUIREMENTS OF RULE 56(c) AND THE PRINCIPLES UNDER THE AUTHORITIES OF THE CASES, UNITED STATES VS PENT-R-BOOKS, SUPRA; ADICKES VS S.H. KRESS AN CO, SUPRA; DALE VS HAHN, SUPRA; JENSEN VS KLECKER, SUPRA. THE OPINION RENDERED BY THE SECOND CIRCUIT IN THE INSTANT CASE, SHOULD BE REVERSED BY THIS COURT, AS A MATTER OF LAW.

IV

DEFENDANT, DAVID R. HARRIS IS SUBJECT TO FEDERAL LAW, AS WELL AS, NOT BEING SO HIGH THAT HE IS ABOVE THE LAW.

IN REGARD TO THE TIME OF THIS ALLEGED INCIDENT, WHICH CREATED THE PETITIONER'S CAUSE OF ACTION.

Since Defendant, David R. Harris (Warden of Green Haven Prison), Taken the Position in telling the Petitioner over the telephone in the Green Haven Chaplain's office: "that Petitioner was going to New Jersey (unlawfully), willingly or unwillingly, Despite of the "Pre transfer Hearing" that was scheduled By the Supreme Court in Dutchess County (New York), in which the Petitioner could contest the Legality of his Delivery to the State of New Jersey.

However, Petitioner was Removed to the State of New Jersey unlawfully, Prior to his "Pre transfer Hearings" under the Agreement.

This Court Held in the case of Davis Vs Passman, —U.S.—, 99 S.Ct. 2264, 2277 (1979):

"

Our System of Jurisprudence on the Assumption that all individuals whatever their position in the goverment are subject to Federal Law: "No man in this country is so High that he is above the Law. No officer of the Law may set that Law at Defiance with impunity. All officers of the goverment, From the Highest to the Lowest are Creatures of the Law and are Bound to obey it."

Withal, Knowledge that Prison officials will be liable for all of its injurious Conduct.... Should Create incentive for officials who may Harbor Doubts about the Lawfulness of their intended Actions to err on the side of Protecting Prisoners Constitutional Rights. Cf., Owens Vs City of Independence, —U.S.—, 100 S.Ct. 1398, 1416 (1980).

A

The Courts Have To Set "Meaningful Adequate Guidelines" For "Prison Officials", In Effectuating That Prison Officials Will Not Defeat "Prisoners Rights", Of The Provisional Articles Under The Agreement.

Since Defendant (Herein) Has Create A Deliberate Indifference Under The Articles Of The Agreement (1) See: Affidavit By Petitioner, Sworn To On The 24th Day Of October 1980 (2) See: Footnote 11, At Page 14 Of Petitioner's Writ Of Certiorari, Filed In This Court On January 10, 1981, And (3) Because Prisoners Are Not In Any, Or No Position To Enforce The Laws Which They May Be Entitle To As A Matter Of Law.

Therefore, The Courts Have To Set "Meaningful Adequate Guidelines" For "Prison Officials" In Effectuating That Prison Officials Will Not Defeat, "Prisoners Rights" Of The Provisional Articles Under The Agreement (Emphasis Added), To Challenge Their Transfer To The Receiving State.

Conclusion

Wherefore, In All Respects To The Above Mentioning Arguments And Under The Integrity Of The American Jurisprudence, Which Purports To Be One Of Justice, Not Merely Of Law. The Decision Rendered By The United States Court Of Appeals, For The Second Circuit On October 15, 1980., Should Be Reversed And Remanded By This Court, With Further Instruction To The Second Circuit, In The Further Dealings With The Petitioner Cause Of Action.

I ALSO UNDERSTAND THAT A FALSE STATEMENT IN THIS PETITION WILL SUBJECT ME TO THE PENALTIES FOR PERJURY.

RESPECTFULLY SUBMITTED
Oliver Gicla West Jr
976 EAST 45 STREET
BROOKLYN NEW YORK, 11203
(FRIEND AND LEGAL ASSISTANT
FOR THE PETITIONER)

PETITIONER: RICHARD PAYTON. 78-A-0098
DRAWER B.
STORMVILLE, NEW YORK, 12582

SWORN TO BEFORE ME THIS
14th DAY OF April 1981

STELE LORIN
Notary Public, State of New York
No. 31-4655600
Qualified in New York County
Commission Expires March 30, 1982

Stele Lorin

CERTIFICATE OF SERVICE

STATE OF NEW YORK) SS:
COUNTY OF KINGS)

NOW COMES, OLIVER GICLA WEST JR, FRIEND AND LEGAL ASSISTANT TO THE PETITIONER (RICHARD PAYTON), FIRST BEING DULY SWORN AND SAYS: THAT I HEREBY CERTIFY THAT I HAVE SERVE A DUPLICATE COPY OF THE PETITIONER'S REPLY AND SUPPLEMENTAL BRIEF, ON THE RESPONDENT BY MAILING SAME TO HIM IN A DULY FRONKED ENVELOPED ADDRESSED AS FOLLOWS:

(1) Hon. Robert Abrams (Att. Gen. N.Y. State)
Two World Trade Center
New York, New York 10047.

To Send By The United States Mail (Via), To Send To The Above Party.

Respectfully Submitted
Oliver Wade West Jr
976 East 45th Street
Brooklyn, New York, 11203
(Friend And Legal Assistant
For The Petitioner)

Petitioner: Richard Payton. 78-A-0098
Drawer B.
Stormville, New York, 12582

Sworn To Before Me This
16th Day Of April 1981

STELL LORIN
Notary Public, State of New York
No. 31-4630000
Qualified In New York County
Commission Expires March 30, 1982

Stell Lorin

Appendix

Affidavit of Richard Payton,

Sworn to October 24, 1980

EXHIBIT A

UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

- x

RICHARD PAYTON, :

Plaintiff-Appellant, : No. 80-2086

-against- :

DAVID HARRIS, : AFFIDAVIT

Defendant-Respondent. :

- x

STATE OF NEW YORK)
ss.:
COUNTY OF DUTCHESS)

RICHARD PAYTON, being duly sworn, deposes and says that:

1. I am the plaintiff-appellant in the above-captioned appeal and am currently an inmate in the Greenhaven Correctional Facility, Stormville, New York. I submit this Affidavit in support of my petition for a rehearing of this appeal.

2. On April 10, 1978, I was incarcerated in the Clinton Correctional Facility at Dannemora, New York.

3. On April 10, 1978, a corrections officer appeared at my cell with a piece of paper and requested that I sign it. I asked the officer what were the contents of the paper, but the officer merely repeated his request that I sign it. I informed the officer that I would not sign the paper unless I knew what it said. The officer thereupon turned around and walked away without ever having informed me of the paper's contents.

EXHIBIT A

4. I have never read the document entitled "Agreement on Detainers: Form I", submitted by defendant Harris as Exhibit "B" (Appendix to Appellant's Brief at 41), nor did anyone communicate to me that the document set forth the right to petition the Governor of New York to disapprove a request for temporary custody.

5. I was never informed prior to my transfer to New Jersey of my rights under Article IX(7) of the Interstate Agreement on Detainers (the "Agreement") to counsel, to make representations to the Governor of New York within thirty days and to contest the legality of my delivery.

6. Prior to my transfer to New Jersey, I was not aware of the rights granted by Article IX(7) of the Agreement. I was not aware of any right to petition the Governor of New York. I did attempt unsuccessfully to secure the assistance of counsel, but did not know that the Agreement required it. My transfer to New Jersey one week prior to a scheduled hearing in Dutchess County Supreme Court denied me the opportunity to contest the legality of delivery.

7. Accordingly, I respectfully request that a rehearing of this Appeal be granted and that on rehearing granted this Court's opinion dated October 15, 1980 be withdrawn and the Court enter a new opinion reversing the judgment of the District Court and remanding the cause to the District Court for further proceedings.

EXHIBIT A

8. The contents of this Affidavit are true to the best of my knowledge and belief and are based on my personal knowledge.

Richard Payton
Richard Payton

Sworn to before me this
24 day of October, 1980

Esmond W. Gifford
Notary Public

ESMOND W. GIFFORD, SR.
Notary Public, State of New York
Dutchess County
My Commission Expires March 30, 1981

EXHIBIT A